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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/687,796	10/13/2000	David W. Paranchych	12231RR(NORTH 1979000)	8528
21909	7590	05/13/2004	EXAMINER	
CARR LAW FIRM, L.L.P. 670 FOUNDERS SQUARE 900 JACKSON STREET DALLAS, TX 75202			JONES, PRENELL P	
			ART UNIT	PAPER NUMBER
			2667	

DATE MAILED: 05/13/2004

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Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/687,796

Applicant(s)

PARANCHYCH ET AL.

Examiner

Prenell P Jones

Art Unit

2667

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 13 October 2000.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☐ Claim(s) 1-97 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☐ Claim(s) 1-97 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

Claim Rejections - 35 USC § 112

1. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

2. Claims 1-92 and 95-97 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter, which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention.

Regarding claim 1, Applicant is claiming in lines 5 and 7, "base power Level," which is not described in the specification. Applicant discloses on page 8, in line 1 of the specification, "a baseline value for power required to communicate with the MS at a given transfer rate." Examiner questions whether Applicants description of on page 8, "baseline value for power" is the same as "base power level" which is cited in claim 1. Claims 2-49 depend on claim 1 therefore claims 2-49 are rejected as well.

Regarding claim 50, Applicant is claiming in lines 7 & 11, "base $\Delta E_b / N_0$ ", which is not described in the specification. However, Applicant does disclose a target $\Delta E_b / N_0$ and an initial $\Delta E_b / N_0$. Examiner questions, if Applicants intentions include that all three, (a base $\Delta E_b / N_0$, an initial $\Delta E_b / N_0$ and a target $\Delta E_b / N_0$) claimed limitations are

equivalent. Claims 51-92 depend on claim 50 therefore claims 51-92 are rejected as well.

Regarding claim 95, Applicant is claiming in lines 2-3, "a total amount of power available less an overhead reserve less a currently used power level" is not described in the specification; Regarding claim 96, Applicant is claiming in lines 1-2, "and 97, Applicant is claiming in lines "overhead reserve is about 25% of the total available power" is not described in the specification; Regarding claim 97, Applicant is claiming in lines 1-2 "the total amount of power is between about 12 and 18 Watts" which is not disclosed in the specification.

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter, which the applicant regards as his invention.

4. Claim 96 recites the limitation "the overhead reserve and the total available power" in lines 1 & 2, and claim 97 recites the limitation "the total amount of power." There is insufficient antecedent basis for these limitations in claims 96 and 97.

5. Claims 94, 96 and 97 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Regarding claim 94, Applicant is claiming in line 10, "**transmitting the data the second data** transfer rate", which is not clear to Examiner exactly what Applicant is claiming. Regarding claim 96, Applicant is claiming,

"the overhead reserve is about 25%", whereby the term "**about**" is vague/indefinite.

Regarding claim 97, Applicant is claiming, "power is between about 12 and 18 watts", whereby the term "**about**" is vague/indefinite.

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

8. Claims 93 is rejected under 35 U.S.C. 103(a) as being unpatentable over Love (6,148,208) in view of Honkasalo (6,097,965) and Bender et al.

Regarding claim 93, Love (6,148,208) discloses (Abstract, col. 2, line 14 thru col. 4, line 67) power control in a wireless communication system wherein a first data rate is associated with a first/minimum power level, power control of a data channel after receiving a second power level, wherein the architecture includes a plurality of CDMA channels serving voice and signaling, QoS (FER/frame error rate) are sent and operated independently of DCCH, first channel is a fundamental channel, (col. 4, line 1-44) second channel is a supplemental channel, power level is controlled on the basis the difference in data rates between channels after achieving a second power level and frame quality/FER and updates to system resume when a channel is available. Love is silent on determining available power level. In analogous art, Honkasalo (6,097,965) discloses (Abstract, Fig. 2, col. 2, line 14-67, col. 5, line 9-41) a wireless communication system that includes varying bit rates of varying transfer rates, wherein the varying transfer rate is associated with an accommodating variable transmission power, an improved method for operating a mobile station at increased effective data rate wherein the architecture includes plurality of channels (fundamental/supplemental channels), requested data rate, and varying data rates to avoid operating in power limited condition. Bender discloses (Abstract, col. 10, line 17 thru col. 11, line 67, col. 14, line 11-35) a wireless communication system wherein the architecture includes assigning services in a high data rate system wherein channel/data rate request is associated with selecting available power levels from a range of power levels (power- control selection process). Therefore it would have been obvious to one of ordinary skill in the art at the

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time of the invention to be motivated to implement determining available power levels for accommodating a variable data transfer rate request as taught by the combined teachings of Honkasalo and Bender with the teachings of Love to further accommodate user service request for the purpose of routing information with minimum delay/contention between source and destination.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Prenell P. Jones whose telephone number is 703-305-0630. The examiner can normally be reached on 9:00-5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Chi Pham can be reached on 703-305-4378. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Prenell P. Jones

May 07, 2004



CHI PHAM
SUPERVISORY PATENT EXAMINER
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5/10/04